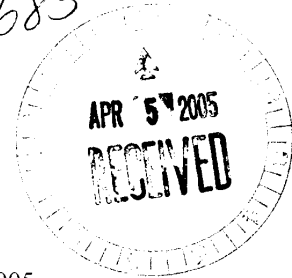


LAW OFFICES  
FRITZ R. KAHN, P.C.  
EIGHTH FLOOR  
1920 N STREET, N.W.  
WASHINGTON, D.C. 20036-1601  
(202) 263-4152  
FAX (202) 331-8330  
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ORIGINAL

2/3685



April 5, 2005

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW (7<sup>th</sup> fl.)  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings

Part of  
Public Record

Dear Secretary Williams:

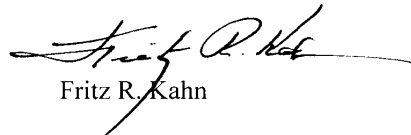
Enclosed for filing in STB Docket No. MC-F-21008, East West Resort Transportation, LLC, and TMS, LLC, d/b/a Colorado Mountain Express-Petition for Declaratory Order-Motor Carrier Transportation of Passengers in Colorado, are the original and ten copies of the Petitioners' Verified Reply

Additional copies of this letter and of the Verified Reply are enclosed for you to stamp to acknowledge your receipt of them and to return to me via the messenger.

Service of the this letter and the Verified Reply has been effected by facsimile transmitting and mailing copies thereof to Respondent's counsel.

If you have any question concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,

  
Fritz R. Kahn

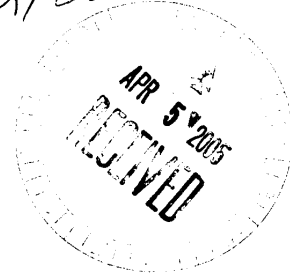
enc.

cc: David A. Beckett, Esq.  
Thomas J. Burke, Jr., Esq.

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

ORIGINAL

2/3685



STB Docket No. MC-F-21008

EAST WEST RESORT TRANSPORTATION, LLC,  
AND TMS, LLC, d/b/a  
COLORADO MOUNTAIN EXPRESS  
-PETITION FOR DECLARATORY ORDER-  
MOTOR CARRIER TRANSPORTATION OF PASSENGERS IN COLORADO

ENTERED  
Office of Proceedings

VERIFIED REPLY  
OF  
EAST WEST RESORT TRANSPORTATION, LLC,  
AND TMS, LLC, d/b/a  
COLORADO MOUNTAIN EXPRESS

Part of  
Public Record

Fritz R. Kahn  
Fritz R. Kahn, P.C.  
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Thomas J. Burke, Jr.  
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1625 Broadway (#1600)  
Denver, CO 80202  
Tel.: (303) 573-1600

Attorneys for

EAST WEST RESORT TRANSPORTATION, LLC,  
and TMS, LLC, d/b/a COLORADO MOUNTAIN  
EXPRESS

Dated: April 5, 2005

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

---

STB Docket No. MC-F-21008

EAST WEST RESORT TRANSPORTATION, LLC,  
AND TMS, LLC, d/b/a  
COLORADO MOUNTAIN EXPRESS  
-PETITION FOR DECLARATORY ORDER-  
MOTOR CARRIER TRANSPORTATION OF PASSENGERS IN COLORADO

---

VERIFIED REPLY  
OF  
EAST WEST RESORT TRANSPORTATION, LLC,  
AND TMS, LLC, d/b/a  
COLORADO MOUNTAIN EXPRESS

Petitioners, East West Resort Transportation, LLC, and TMS, LLC, d/b/a Colorado Mountain Express ("CME"), pursuant to 49 C.F.R. 1104.13(a), reply to the Motion for Extension of Time to File Verified Reply Statement to CME's Opening Evidence, filed April 4, 2005, by the Colorado Public Utilities Commission ("CPUC"), as follows:

1. CPUC's request for a four-month stay of the proceeding is a transparent attempt by CPUC to delay its conclusion, which the Board should not countenance.<sup>1</sup>

---

<sup>1</sup> In an April 1, 2005, telephone conference between the Colorado assistant attorney general who signed the CPUC's Motion and CME's co-counsel, the assistant attorney general declined to join in a request of the United States District Court before which the companion action for declaratory and injunctive relief is pending to await the Board's determination. This underscores the obvious tactical motivation for the CPUC's request for a four-month delay.

2. The ostensible purpose of the stay is to permit CPUC to take the depositions of the four deponents whose sworn verified statements were appended to CME's Petition for Declaratory Order, filed September 24, 2004, and to pursue discovery otherwise.

3. Pursuant to the Board's rules of practice, 49 C.F.R. 1114.21(d), however, discovery can be had any time after the commencement of a proceeding, and CPUC offers no explanation in its Motion why it did not pursue discovery in the more than six months since CME filed its Petition for Declaratory Order.

4. Moreover, CPUC fails to mention in its Motion that it was accorded the right to pursue discovery but failed to do so in the related action for declaratory and injunctive relief, Civil Action No. 04-B-0105 (MJW), East West Resort Transportation, LLC, et al. v. Gregory E. Spokin, et al., pending before the United States District Court for the Colorado. The Stipulated Hybrid Scheduling Order, signed by Chief United States District Judge Lewis Babcock, on March 17, 2004, a copy of which is attached, specifically provided, at paragraph 4, that the parties would be permitted to take depositions after concluding two rounds of written discovery requests. CPUC, however, took absolutely no action in response to the Court's order.

5. On April 21, 2004, after CME had brought the District Court action, CPUC's enforcement staff, two Assistant Attorneys General, CME's co-counsel, CME's chief executive officer, its information technology manager and its chief financial officer, along with others, met at CME's Edwards, Colorado, headquarters and spent an entire working day reviewing all of the documents requested by CPUC, and observing a painstakingly-prepared PowerPoint demonstration of how CME's scheduled, regular-route passenger trips are developed, booked, and ultimately performed.

6. At the conclusion of this day-long exercise, CME informed CPUC that it would make copies of all of the underlying documents and would make them available at the Denver office of CME's co-counsel, which is located approximately two and half blocks from the offices of the Colorado Attorney General. In the approximately six months since the documents were brought to the office of CME's co-counsel in Denver, CPUC not once asked to see them.

7. Finally, CPUC refrains from disclosing in its Motion that, as an intrastate Colorado motor carrier, CME also is subject to CPUC's audit jurisdiction. Pursuant to Colorado Rev. Stat Ann. §40-6-106 (2004), the agency's inspectors are authorized by statute to examine the books and records of CME and to examine, under oath, its officers and employees. In fact, CPUC did just that on October 12 and 13, 2004, at the company's offices in Edwards, Colorado. CPUC's Compliance Investigator, Mr. Reinhard A. Wolf, examined CME's President, Mr. Jay R. Ufer, on the first day and spent virtually the remainder of the first and most of the second day going over CME's books and records.

8. At page 5 of its Motion, CPUC suggests that it needs discovery to identify the nature of the dispute between itself and CME. On its face, the suggestion is implausible. It was CPUC which initiated the controversy between it and CME when on October 1, 2003, it issued its Civil Penalty Assessment Notice charging CME with sixteen counts of "[c]arrying and advertising to carry persons at rates different from those on file with the Commission." CPUC would not have lodged its complaint against CME if it did not have in a mind a rationale for believing it possessed the authority to regulate the rates of CME when rendering scheduled, regular-route service over the routes CME was authorized to serve by the former ICC and this Board.

9. The issues which divide CPUC and CME heretofore have been identified in numerous pleadings filed in the District Court action, namely, first, whether CPUC is empowered to regulate the rates of CME when rendering scheduled, regular-route service over its ICC and Board authorized routes, because CME has been certificated to render similar service by CPUC; second, whether CME's scheduled, regular-route operations performed pursuant to third-party bookings, that is, through vacation packages arranged by third-party Internet websites, ski resorts or travel agents, rather than by connecting airlines, are in interstate commerce; and, third, whether the transportation of nearly a fourth of its passengers in interstate commerce over such routes constitutes substantial use of CME's ICC and Board authorized routes. As previously noted, these issues were the subject of detailed discussion between representatives of CPUC and the Assistant Attorneys General and representatives of CME at CME's Edwards, Colorado, offices on April 21, 2004, and there was no uncertainty what the positions of the parties were. Surely, CPUC is capable of now addressing the issues without pursuing the protracted discovery which its Motion seeks.

10. Indeed, at page 4 of its Motion, CPUC identifies only two factual, as opposed to legal, subjects which it claims call for discovery: "(1) whether CME's operations are regularly scheduled or (2) whether the third parties who arrange vacation packages actually arrange a substantial number of combined air and land packages (as opposed to intrastate, land-only packages [footnotes omitted])".

11. As for the first question, CME's schedules operated during the ski season are posted on CME's web page and could easily be verified by CPUC's inspectors at the Denver and Eagle

airports, on the one hand, and, on the other, the hotels and ski resorts of Summit, Eagle and Pitkin Counties.

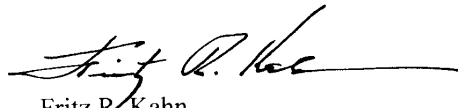
12. And as for the second question, the number of combined air and land packages pursuant to which CME performed its scheduled, regular-route operations could have been calculated by CPUC's Compliance Investigator, Reinhard A. Wolf, who examined CME's books and records on October 12 and 13, 2004, at CME's office in Edwards, Colorado, subject to confirmation by checking with the ski resorts or travel agents which compiled the vacation packages, or by a physical review of CME's records now reposing in the offices of its Denver co-counsel. In point of fact, CPUC's inspectors have interviewed the authors of the sworn verified statements appended to CME's Petition for Declaratory Order, Mr. Mark Uhlfelder, President of S&L Travel Partners, Inc., Mr. Bruce Rosard, President of Mouguls Mountain Travel, and Mr. Christopher Jarnot, Vice President of Vail Resorts Management Company, or their authorized designees. CPUC still has a week within which to have its inspectors prepare verified statements reporting their findings as to CME's scheduled operations or recounting their conversations with these representatives of the ski resorts or travel agents and to file such verified statements with the Board when due, on or before April 11, 2005.

WHEREFORE, East West Resort Transportation, LLC, and TMS, LLC, d/b/a Colorado Mountain Express, ask that the Colorado Public Utilities Commission's Motion for Extension of Time to File Verified Reply Statement to CME's Opening Evidence be denied.

Respectfully submitted,

EAST WEST RESORT TRANSPORTATION, LLC,  
and TMS, LLC, d/b/a COLORADO MOUNTAIN  
EXPRESS

By their attorneys,

A handwritten signature in black ink, appearing to read "Fritz R. Kahn", with a long horizontal flourish extending to the right.

Fritz R. Kahn  
Fritz R. Kahn, P.C.  
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Thomas J. Burke, Jr.  
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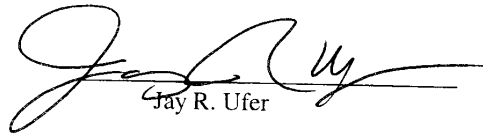
Dated: April 5, 2005



## VERIFICATION

I, Jay R. Ufer, President of Colorado Mountain Express, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Reply and that its factual assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Colorado Mountain Express. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Denver, CO, this 4<sup>th</sup> day of April 2005.



Jay R. Ufer

RECEIVED MAR 18 2004

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

MAR 18 2004

GREGORY C. LANGHAM  
CLERK

Civil Action No. 04-B-0150<sup>105</sup> (MJW)

EAST WEST RESORT TRANSPORTATION, LLC, doing  
business as COLORADO MOUNTAIN EXPRESS and/or  
CME PREMIER and/or  
PREMIER VIP TRANSPORTATION and/or  
RESORT EXPRESS aka  
COLORADO MOUNTAIN EXPRESS, LLC,

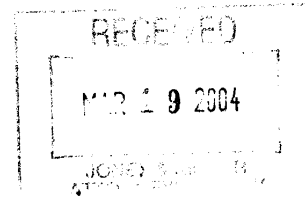
Plaintiff,

v.

GREGORY E. SOPKIN,  
POLLY PAGE, AND  
JIM DYER, in their official capacities as Commissioners of  
the Public Utilities Commission of the State of Colorado; and

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Defendants.



---

**STIPULATED HYBRID SCHEDULING ORDER**

---

Plaintiff East West Resort Transportation, LLC, doing business as Colorado Mountain Express and/or CME Premier and/or Premier VIP Transportation and/or Resort Express aka Colorado Mountain Express, LLC ("Plaintiff") and Defendants Gregory E. Sopkin, Polly Page and Jim Dyer, in their official capacities as Commissioners of the Public Utilities Commission of the State of Colorado and the Public Utilities Commission of the State of Colorado ("Commission") (Defendants collectively, "CPUC") submit the following Stipulated Hybrid Scheduling Order in accordance with this Court's Order of February 18, 2004.

1. Description of Legal Issues in the Case:

(a) Plaintiff:

Plaintiff is a motor common carrier of passengers licensed to provide passenger transportation in both interstate and intrastate commerce, whose operations in both categories are conducted solely within the State of Colorado. Plaintiff holds certificates of public convenience and necessity issued by the Interstate Commerce Commission and its successor agency, the United States Surface Transportation Board ("the federal certificates"), as well as by the Defendant Commission ("the CPUC certificate"). Each such agency's authorizations provide for the transportation of passengers over substantially the same routes, between Denver International Airport and Aspen, Colorado, serving all intermediate points.

The Plaintiff's federal certificates authorize the transportation of passengers in both intrastate and interstate commerce, while the CPUC certificates authorize only intrastate passenger transportation.

On September 29 and September 30, 2003, the Plaintiff operated its vehicles between Aspen, Colorado and Denver International Airport and charged rates for transportation other than those on file with the Commission. On October 1, 2003, the Commission staff issued the Plaintiff Civil Penalty Assessment Notice or Notice of Complaint to Appear No. 28339-CPAN ("CPAN No. 28339"), in which it alleged that the Plaintiff, on September 29 and 30, 2003, transported passengers between points on the pertinent routes at rates other than those on file with the Commission. The Commission staff proposed to impose monetary penalties on the Plaintiff totaling \$6,400. The Plaintiff disagreed with the proposed penalties and arranged to set the CPAN's allegations for hearing before a Commission Administrative Law Judge.

Prior to such hearing, the Plaintiff filed the present action against the CPUC for declaratory relief and preliminary and permanent injunctions. The Plaintiff premises its claims on what it contends are preemptive provisions of 49 U.S.C. § 14501, which, among other things, preclude state regulatory agencies such as the Commission from exerting jurisdiction over the rates carriers such as the Plaintiff charge their passengers while operating under their federal certificates, as well as from imposing a legal standard for their determination. The Plaintiff also seeks an award of attorney's fees and costs under 42 U.S.C. § 1988 inasmuch as the right to engage in commercial activity protected by Art. I, § 8 of the U.S. Constitution ("the Commerce Clause") is a civil right under 42 U.S.C. § 1983.

(b) Defendants:

The Commission is an agency of the State of Colorado, established by its Legislature pursuant to C.R.S. § 40-2-101. The Commission both possesses and exercises exclusive authority to regulate public utilities, including common carriers of passengers, pursuant to article XXV of the Constitution of the State of Colorado. Defendants Gregory E. Sopkin, Polly Page, and Jim Dyer are the duly appointed and lawfully serving Commissioners of the Commission.

During 2003, Plaintiff's tariff, Colorado PUC No. 12 (as adopted), was in effect. Plaintiff's tariff sets forth the rates at which Plaintiff is authorized under its CPUC certificate to provide intrastate transportation. On October 29, 2003, the Commission staff issued CPAN No. 28339 to Plaintiff. CPAN No. 28339 alleged sixteen violations, eight occurring on September 29, 2003 and the other eight occurring on September 30, 2003. All sixteen violations alleged in CPAN No. 28339 concern Section 40-10-117, C.R.S. (2003), which prohibits motor vehicle carriers from carrying or advertising to carry persons at rates different from those on file with the

Commission. Through CPAN No. 28339, the Commission seeks to impose only a monetary penalty on the Plaintiff totaling \$6,400. On November 20, 2003, Plaintiff filed a revised tariff, Colorado PUC No. 2, with the Commission to adjust, *inter alia*, Plaintiff's intrastate scheduled transportation rates on file with the Commission. The rates as filed in Colorado PUC No. 2 reconcile the discrepancy between filed and advertised intrastate rates that existed on September 29-30, 2003. Colorado PUC No. 2 became effective by operation of law on January 2, 2004. Because Plaintiff did not pay the penalty sought in CPAN No. 28339, the Commission opened Docket No. 03G-472CP to adjudicate the allegations contained therein. By Decision No. R04-0170-I, the Commission vacated the hearing date in Docket No. 03G-472CP and suspended that matter pending the outcome of this case.

The CPUC opposes Plaintiff's claims in this case on a number of grounds. Plaintiff's claims are barred by a number of constitutional and statutory authorities. First, the Eleventh Amendment to the United States Constitution bars Plaintiff's claims entirely; as an "arm of the state," the CPUC is entitled to Eleventh Amendment immunity. Plaintiff's claims are also completely barred by the Anti-Injunction Act, 22 U.S.C. § 2283. Plaintiff's claim for violation of civil rights is specifically barred as to Defendant Commission because it is not a "person" within the meaning of 42 U.S.C. § 1983. Finally, Plaintiff's action in this Court is barred because it has not exhausted its administrative remedies.

Additionally, the CPUC asserts that this Court must abstain from judgment in this case, because (1) there is an ongoing state enforcement proceeding, (2) Commission and the Colorado courts are adequate and appropriate forums to hear Plaintiff's claims, and (3) CPUC's exercise of its regulatory authority to protect the health, welfare, and safety of its citizens who ride intrastate

motor carriers involves an important state interest. This Court should decline jurisdiction over this case because a duplicative state proceeding exists in which Plaintiff's issues could be adjudicated. A state district court, hearing an appeal of a Commission decision, has jurisdiction to make a determination regarding affirmative defenses presented by the Plaintiff with regard to the civil penalty proceeding, including affirmative defenses claiming lack of jurisdiction resulting from federal preemption.

Without question, the Commission has a right and obligation to enforce the statutes of the State of Colorado set forth in title 40 of the Colorado Revised Statutes and any regulations promulgated thereunder. Moreover, because Plaintiff possesses a CPUC certificate authorizing it to provide transportation as a common carrier of passengers, Plaintiff is subject to the applicable sections of the Colorado Revised Statutes and any regulations promulgated thereunder, including regulations regarding the Plaintiff's intrastate filed, charged, or advertised rates. The CPUC certificate was issued to the Plaintiff pursuant to the powers conferred by article 10 of title 40 of the Colorado Revised Statutes. Importantly, Plaintiff has repeatedly acknowledged and subjected itself to the Commission's jurisdiction over Plaintiff by voluntarily appearing before the Commission in a number of contexts, including to modify its CPUC certificate, transfer its CPUC certificate, or challenge the application of a competing motor vehicle carrier. In fact, according to the Commission's files, Plaintiff has invoked or accepted Commission jurisdiction in this manner in twelve separate Commission dockets since January 1, 2001.

Plaintiff alleges that it conducts scheduled interstate and intrastate operations under the federal certificates. If this Court reaches the merits and Plaintiff proves this allegation, then the CPUC contends that this case can result in one of only three outcomes: (1) the Commission

lacks jurisdiction over Plaintiff's scheduled operations: Commission Docket No. 03G-472CP would terminate and Plaintiff will have no basis to retain the scheduled authority portion of its CPUC certificate; (2) this Court and the Commission have concurrent jurisdiction over their respective portions of Plaintiff's scheduled operations: Commission Docket No. 03G-472CP should be permitted to proceed as it is based on whether Plaintiff was conducting operations pursuant to the CPUC certificate in compliance with state law; or (3) this Court lacks jurisdiction over Plaintiff's scheduled operations: Commission Docket No. 03G-472CP shall proceed due to the absence of issues involving federal authorized operating rights and federal preemption.

2. Factual Stipulations:

(a) The Plaintiff is a limited liability company organized and existing under the laws of the state of Delaware. The Plaintiff holds certificates of public convenience and necessity issued by the Interstate Commerce Commission and its successor agency, the United States Surface Transportation Board. Such certificates authorize the transportation of passengers in interstate and intrastate commerce over regular routes between Denver International Airport and Aspen, Colorado, and all intermediate points. Such certificates are set forth in the Complaint in this action as Exhibits A through H.

(b) The Commission is a Colorado regulatory authority responsible for regulating the rates, routes, and safety of common carriers of passengers that operate in intrastate commerce, and, when appropriate, issuing certificates of public convenience and necessity that establish the operating rights of such common carriers. The Plaintiff holds a certificate of public convenience and necessity (the CPUC certificate) issued by the Commission which, in relevant part, authorizes transportation of passengers in intrastate commerce, on schedule, over routes

between Denver International Airport and Aspen, Colorado and all intermediate points. A copy of the certificate of public convenience and necessity issued to the Plaintiff by the Commission is attached to the Complaint as Exhibit L.

(c) On October 1, 2003, the Commission issued CPAN No 28339, in which it alleged that the Plaintiff, on September 29 and 30, 2003, operated in violation of C.R.S. § 40-10-117, by advertising to transport and/or transporting passengers over routes wholly within Colorado at rates other than those on file and in effect with the Commission. The Commission proposed to impose monetary penalties on the Plaintiff, for violations set forth in CPAN No. 28339, totaling \$6,400. The Plaintiff disagreed with the proposed penalties and arranged to set the matter for hearing before a Commission Administrative Law Judge. The resulting Commission proceeding is presently stayed pending this Court's decision.

(d) On the dates and times alleged in the CPAN No. 28339, the Plaintiff advertised to transport and/or transported passengers within Colorado at rates other than those on file and in effect with the Commission.

(e) Plaintiff's vehicles are marked on the exterior with identifying numbers both for certificates issued by the Commission and the Interstate Commerce Commission and its successor agency, the United States Surface Transportation Board.

3. Description of All Material Issues of Fact:

The parties believe that issues of disputed material fact are few, if any, consisting of what are at most mixed questions of fact and law, including whether: (1) at the time and on the dates alleged in CPAN No. 28339 the Plaintiff was operating with its federal certificates or its CPUC certificate; (2) its operations were over an authorized interstate route; (3) such operations were in



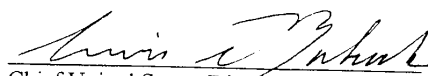
interstate or intrastate commerce, or both; and (4) Plaintiff was operating under its federal certificates in permitted intrastate commerce, Plaintiff's operations were "substantial" as a matter of law.

4. Discovery:

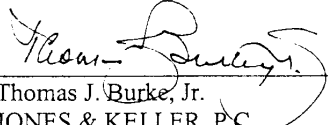
The parties may each propound two rounds of written discovery requests, which shall be responded to within 20 days from the date of service. The second round of discovery shall be limited to the scope of the initial round of discovery, following up on responses provided to the initial round of discovery. The initial round of discovery shall be served not later than April 1, 2004. Each side may take depositions on oral examination of two witnesses, none of which may exceed seven hours, absent order of the Court. Both the Plaintiff and the CPUC recognize that the most efficient use of resources in this matter requires that depositions, if any, shall be set after responses to the initial round of discovery have been received. To give effect to this recognition, the Plaintiff and the CPUC agree to make their witnesses available toward the end of the discovery period. All discovery shall be completed on or before May 31, 2004.

DATED this 17<sup>th</sup> day of March, 2004.

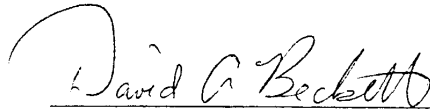
BY THE COURT:

  
Chief United States District Judge

APPROVED:



Thomas J. Burke, Jr.  
JONES & KELLER, P.C.  
1625 Broadway, Suite 1600  
Denver, CO 80202  
Telephone: (303) 573-1600  
Facsimile: (303) 893-6506  
ATTORNEYS FOR  
PLAINTIFFS



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John J. Roberts  
Assistant Attorneys General  
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D.C. Box No. 20  
Telephone: (303) 866-5135  
Facsimile: (303) 866-5395  
ATTORNEYS FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF SERVICE

Civil Case No. 04-B-105 (MJW)

The undersigned certifies that a copy of the foregoing STIPULATED HYBRID  
SCHEDULING ORDER was served on March 18, 2004, by:

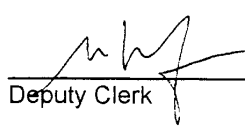
(X) delivery to:

David Beckett  
John J. Roberts  
Assistant Attorney Generals  
Business and Licensing Section  
**D. C. Box 20**

Magistrate Judge Michael J. Watanabe

(X) depositing the same in the United States Mail, postage prepaid, addressed to:

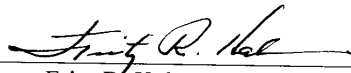
Thomas J. Burke, Jr., Esq.  
Jones & Keller, P.C.  
1625 Broadway, Suite 1600  
Denver, CO 80202

  
\_\_\_\_\_  
Deputy Clerk

CERTIFICATE OF SERVICE

I certify that I this day have served a copy of the foregoing Verified Reply upon the Colorado Public Utilities Commission by facsimile transmitting a copy, as well as mailing a copy, by prepaid first-class mail, to its counsel, David A. Beckett, Esq.

Dated at Washington, DC, this 5<sup>th</sup> day of April 2005.

  
\_\_\_\_\_  
Fritz R. Kahn